

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FRANKIE DESIDERI,

Plaintiff,

v.

SIMON'S AGENCY, INC.,

Defendant.

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Case No. 2:19-cv-4958

Chief Judge Algenon L. Marbley

Magistrate Judge Jolson

OPINION & ORDER

This matter comes before the Court on Magistrate Judge Jolson's March 26, 2020 Report and Recommendation that this case be dismissed for want of prosecution. (ECF No. 10). The Court **ADOPTS** the Magistrate Judge's Report and Recommendation. The matter is hereby **DISMISSED WITHOUT PREJUDICE**.


Plaintiff originally filed this action in Franklin County, Ohio Municipal Court and Defendant removed to this Court. (ECF No. 1). On January 3, 2020, Defendant filed a Motion for Judgment on the Pleadings. (ECF No. 5). After Plaintiff failed to respond by the January 24, 2020 deadline, the Magistrate Judge ordered Plaintiff to show cause as to why the case should not be dismissed for want of prosecution. (ECF No. 8). After the First Show Cause Order deadline passed, the Magistrate Judge issued a Second Show Cause Order, which granted Plaintiff an additional week to file a response. (ECF No. 9). Plaintiff again failed to file a response. The Magistrate Judge then issued the Report and Recommendation that this case be dismissed on March 26, 2020. (ECF No. 10). Plaintiff did not file any objections.

Federal Rule of Civil Procedure 41(b) “gives courts the authority to dismiss a case for ‘failure of the plaintiff to prosecute or to comply with these rules or any order of the court.’” *Knoll v. Am. Tel. & Tel. Co.*, 176 F.3d 359, 362-63 (6th Cir. 1999) (quoting Fed. R. Civ. P. 41(b)). “This measure is available to the district court as a tool to effect ‘management of its docket and avoidance of unnecessary burdens on the tax-supported courts [and] opposing parties.’” *Id.* at 363 (quoting *Matter of Sanction of Baker*, 744 F.2d 1438, 1441 (10th Cir.1984)). The Court considers four factors in whether to dismiss a case for want of prosecution: “(1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.” *Id.*

Failure to file objections within fourteen days results in waiver of de novo review of the Magistrate’s Report and Recommendation. *See, e.g., McCall v. Ohio*, No. 2:18-cv-1261, 2019 WL 188039 at *1 (S.D. Ohio Jan. 14, 2019). The Magistrate Judge noted that Plaintiff has refused to litigate this action since filing it in October 2019, despite multiple warnings from the Court that failure to prosecute would result in dismissal. (ECF No. 10 at 2). The Magistrate Judge found, given these facts, the interest in docket management “outweigh[ed] allowing this case to linger.” (ECF No. 10 at 3). Having reviewed the Magistrate Judge’s Report and Recommendation, and acknowledging that Plaintiff has filed no objections and has otherwise failed to prosecute this case since its filing, this Court agrees that even under a de novo standard of review dismissal is appropriate.

For these reasons, this Court **ADOPTS** Magistrate Judge Jolson’s March 26, 2020 Report and Recommendation. This matter is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATE: May 4, 2020